STATE OF MICHIGAN

COURT OF APPEALS

MAKEYA MILLER,

Plaintiff-Appellee,

v

KWAME LEVELLE MOLETTE and EAST SIDE CAB, INC.,

Defendants-Appellants.

UNPUBLISHED
May 20, 2003

No. 235575
Wayne Circuit Court
LC No. 86-604602-NI

Before: Murray, P.J., and Neff and Talbot, JJ.

PER CURIAM.

We granted defendants leave to appeal the circuit court's order that (1) vacated the satisfaction of a consent judgment that was entered twelve years ago, under which defendants had paid plaintiff's guardian the agreed settlement amount of $85,000, and (2) directed defendants to repay plaintiff the total amount of $217,027.72, reflecting the settlement amount with interest. We reverse.

I. Facts and Procedural History

In 1985, when plaintiff was about four years old, she was struck and injured by a cab owned by defendant East Side Cab, Inc., and driven by defendant Kwame Molette. In 1986, plaintiff's grandmother and legal guardian, Juanita Moore, filed suit on plaintiff's behalf. The parties subsequently accepted the mediation evaluation for the amount of $85,000, of which $55,902.60 was to be allocated to plaintiff's estate while the remaining portion covered attorney fees and costs.

The consent judgment was entered on September 16, 1988. Three days later, defendants tendered payment. The check was made payable to Moore, in her capacity as plaintiff's guardian, and to plaintiff's attorneys, Weisberg & Walkon, P.C. The check was subsequently deposited into the law firm's client trust account. In consideration of payment, Moore and plaintiff's attorney, Clifford B. Walkon, signed a satisfaction of judgment, dated September 19, 1988. Moore also signed a document releasing defendants from further liability. According to plaintiff, Moore then filed a petition in the probate court for her appointment as conservator of

plaintiff's estate.[1] The satisfaction of the judgment was entered by the trial court on October 6, 1988. One month later, the probate court conditionally approved Moore's petition for appointment as conservator. It is undisputed in this case that, because she failed to pay a $50,000 bond, Moore never attained conservator status.

In 2001, a few months after plaintiff attained the age of majority, she learned that "no money existed." She filed a motion to reopen the file and to vacate the satisfaction of the 1988 consent judgment on the ground that defendants tendered payment to the wrong party. She claimed that defendants tendered the payment to her guardian, Moore, in violation of former MCR 2.420(B)(3),[2] which required the payment to be tendered to her conservator only. However, in her motion, plaintiff challenged not only the validity of the satisfaction of the consent judgment, but the consent judgment, itself. She asserted that the consent judgment should not have been signed or entered by the trial court until a conservator had been appointed. While clearly challenging the validity of the 1988 consent judgment, plaintiff also sought an order for defendants to comply with that judgment and pay her the settlement amount with interest.

Defendants contended that they had promptly satisfied the judgment and that they were under no duty to independently verify the probate proceedings in the underlying case pursuant to MCL 700.483. They asserted that it was the sole responsibility of Moore and plaintiff's attorneys to ensure that the proper legal steps were taken prior to the entry of the consent judgment and the settlement payment. Defendants argued that the settlement payment was deposited into the client trust account of plaintiff's own attorneys, Weisberg & Walkon, P.C., and that the proper distribution of the funds became their sole responsibility. Further, defendants asserted that plaintiff's remedy lay in a claim of legal malpractice against her former attorneys.

The trial court denied plaintiff's motion on the ground that, assuming the failure of plaintiff's attorneys to secure the appointment of a conservator vitiated the consent judgment, plaintiff was barred from simultaneously challenging the validity of the judgment and seeking to enforce the same judgment.

In a motion for relief from the trial court's order, plaintiff explained that the language in her earlier motion was poorly drafted. She stated that her original motion intended only to challenge the satisfaction of the consent judgment but, *in the alternative*, to vacate the 1988 consent judgment pursuant to MCR 2.612(C)(1)(a) and (f), and to enforce the mediation award upon the appointment of a conservator. Plaintiff asserted that the original payment should be construed as non-payment on the ground that it failed to satisfy the judgment pursuant to former MCR 2.420(B)(3).

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[1] The lower court record does not indicate when Moore filed her petition to be appointed as plaintiff's conservator.

[2] In 1988, the former MCR 2.420(B)(3) provided in pertinent part

> (3) If the settlement or judgment requires payment of more than $5,000 to the minor[,] . . . a conservator must be appointed by the probate court before the entry of the judgment or dismissal.

The trial court granted plaintiff's motion on the ground that the payment was made in violation of former MCR 2.420(B)(3), and ordered defendants to pay $55,902.60, less the $5,000 statutory credit[3] with simple interest. The court also ordered plaintiff to assign to defendants her rights to pursue actions against Moore and plaintiff's former attorneys who handled the underlying action. Plaintiff moved for clarification of the order, asserting that the interest should be compounded.

Defendants filed a motion for reconsideration, asserting that the trial court was without authority, pursuant to MCR 2.612(C)(2), to enter the order of judgment. Defendants argued that MCL 600.5851, which protected claims that accrued during a person's minority, did not toll the time in which plaintiff could raise a postjudgment motion. Accordingly, defendants claimed that the limitations period had run for plaintiff to seek relief from the 1988 consent judgment. The court ruled that no palpable error was made, and it granted plaintiff's motion for a compound interest, bringing the payment to over $217,000. The court's order was subsequently amended to reflect the fact that plaintiff assigned to defendants the proceeds of her potential legal malpractice claim against her former attorneys.

II. Analysis

This case presents the dispositive question of whether plaintiff's postjudgment motion to vacate the satisfaction of the 1988 consent judgment was tolled during the period of her infancy under MCL 600.5851. We conclude that the language of that statute does not toll the period in which plaintiff may seek postjudgment relief and accordingly, plaintiff's motion for postjudgment relief was time-barred by MCR 2.612(C)(2).

Although plaintiff failed to specify below the court rule upon which she relied in filing her postjudgment motion, and the trial court did not indicate the basis upon which it granted relief, we can address the issue because it involves a question of law and the facts necessary for its resolution have been presented. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002). The interpretation and application of court rules and statutes presents a question of law that is reviewed de novo. *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999). We review the trial court's decision to grant relief from judgment for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 555; 593 NW2d 200 (1999).

We agree with defendants' undisputed assertion that plaintiff's motion was brought under MCR 2.612. Interpretation of a court rule is subject to the same basic principles that govern statutory interpretation. *Szymanski v Brown*, 221 Mich App 423, 433; 562 NW2d 212 (1997). A court rule should be construed in accordance with the ordinary and approved usage of the language in light of the purpose of the court rule. *Id*. As explained by Dean & Longhofer, *Michigan Court Rules Practice* (4th Ed), § 2612.16, p 482, "[a]ll applications for relief made directly in the proceedings that produced the judgment are governed by MCR 2.612, without regard to the legal or equitable character of the proceedings." In pertinent part, MCR 2.612(C) provides

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[3] See former MCR 2.420 that allows a defendant to directly pay a minor plaintiff a judgment of up to $5,000 in one year pursuant to MCL 700.403.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment. [MCR 2.612(C)(1).]

Subsections (d) and (e) are inapplicable in this case. Plaintiff does not claim the judgment is void,[4] and she does not seek relief on the ground that the judgment has been satisfied, reversed, or vacated. Therefore, we look to subsections (a)-(c) and (f).

Pursuant to MCR 2.612(C)(2), relief under subsections (a)-(c) must be sought within one year after the judgment or order or proceeding *was entered*, a condition plaintiff failed to satisfy. The language in the rule does not carve out an exception for minors.

Plaintiff cites to MCL 600.5851(1) in support of her argument that her challenge of the consent judgment's satisfaction was tolled during the period of her infancy. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). "Where a statute is clear and unambiguous, judicial construction is precluded." *Id.* "If the language used is clear, then the Legislature must have intended the meaning it has plainly expressed, and the statute must be enforced as written." *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997).

MCL 600.5851(1) provides in pertinent part:

. . . if the person first entitled to make an entry or bring *an action* under this act is under 18 years of age . . . at the time *the claim* accrues, the person or those claiming under the person shall have 1 year after the disability is removed through

[4] Although plaintiff moved the trial court in the alternative to vacate the consent judgment on the ground that it was improperly entered, she did not assert below or on appeal that the consent judgment was void.

> death or otherwise, to make the entry or *bring the action* although the period of limitations has run. . . . [MCL 600.5851 (1) (emphasis added).]

There is nothing in the above language to indicate that the tolling protections allow plaintiff to seek postjudgment relief. Rather, the above language only allows a plaintiff who attained the age of majority to bring *action* on *a claim* that accrued during the period of her infancy. MCR 2.101(A) provides that "[t]here is one form of action known as a 'civil action.'" A civil action is "commenced by filing a complaint with a court." MCR 2.101(B). In the instant case, plaintiff did not filed a complaint; she sought postjudgment relief to reopen the file, vacate the satisfaction of the 1988 consent judgment and to receive repayment of the 1988 consent judgment with interest. Thus, plaintiff did not bring an *action*, the limitations period of which would have been tolled under MCL 600.5851. Therefore, plaintiff's postjudgment motion failed to satisfy the one-year restriction that MCR 2.612(C)(2) imposes on relief sought pursuant to subrule (1)(a)-(c).

Plaintiff's reliance on *Klosky v Dick*, 359 Mich 615; 103 NW2d 618 (1960), is misplaced. In that case the plaintiff filed a new action to renew the judgment when he attained the age of majority, rather than for postjudgment relief. *Id*. at 616. We agree with defendants' argument that *Klosky* did not address whether the limitations requirements in Michigan court rules were affected by the tolling statute.

We now turn to subsection (f), which allows relief from judgment for "any other reason." MCR 2.612(C)(1)(f). To receive relief from judgment under this subsection, three requirements must be met: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999); *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992).

We conclude that plaintiff fails to meet all three requirements. With respect to the first requirement, relief could not have been granted pursuant to MCR 2.612(C)(1)(a)-(c) because the motion was time-barred under MCR 2.612(C)(2), and plaintiff was not protected by the provisions of the tolling statute. Further, plaintiff's arguments show that she was seeking relief from the satisfaction of the consent judgment because of a mistake that the parties made when defendants "paid the wrong party." Arguably, this would fall under subsection (a), thus barring any relief under subsection (f). As previously stated, subsections (d) and (e) are inapplicable in this case. Thus, the first requirement to qualify for subsection (f) is not satisfied. [5]

Second, defendants' rights would be detrimentally affected if the original satisfaction to the 1988 consent judgment were set aside. Plaintiff requests defendants to simply make a second payment. Plaintiff never claimed that the proceeds of the first payment were not used for her benefit. She never asserted that Moore, her grandmother and guardian, absconded the funds.

[5] We are cognizant of the decision in *Heugel, supra* at 481, which carved out an exception to the first requirement for cases where "additional factors exist that persuade the court that injustice will result if the judgment is allowed to stand." However, we need not address the exception because plaintiff fails to satisfy the last two requirements, as discussed *infra*.

Plaintiff merely asserted that "no money existed" when she attained the age of majority. In effect, plaintiff's request for relief attempts to "double-dip" defendants or to receive a windfall. Moreover, on this record, we are not persuaded that plaintiff provided the trial court with any proof to support her argument that defendants had the legal duty to ensure that Moore properly effectuated her status as conservator. As explained by Dean & Longhofer, *Michigan Court Rules Practice* (4th Ed), § 2420.4, p 588

> If the court approves the proposed settlement, it is incumbent upon *the attorney for the minor* to take those additional steps necessary to secure entry of the consent judgment . . . .
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> * * *
>
> If no conservator has yet been appointed for the minor, . . . the trial court may approve the settlement, but condition entry of a consent judgment or dismissal on the completion of the necessary probate court proceedings. If no conservator exists, *the attorney for the minor* must obtain such an appointment and advise the probate court of the proposed settlement. . . . . [Emphasis added.]

Finally, plaintiff fails to demonstrate any extraordinary circumstances entitling her to relief. Plaintiff was not without an adequate remedy in law to recoup the funds, assuming that she could provide proof of damages. It is readily apparent from the circumstances in this case that plaintiff's claim that accrued during her infancy, if any, pertained to the manner in which her former attorneys and Moore handled the settlement payment. Plaintiff concedes on appeal that her former attorneys and Moore had a duty to post the requisite bond to formalize Moore's conservator status.[6] In such case, plaintiff should have brought an action against the proper parties, pursuant to the tolling statute, instead of attempting to disrupt the finality of the consent judgment. See *Hanley v Mazda Motor Corp*, 239 Mich App 596, 602; 609 NW2d 203 (2000). Therefore, plaintiff's motion for relief was time-barred pursuant to MCR 2.612(C)(2). Accordingly, the trial court improperly vacated the original satisfaction to the 1988 consent judgment and improperly ordered defendants to repay plaintiff.

Because this issue is dispositive to this case, we decline to address defendants' remaining issues.

Reversed.

/s/ Christopher M. Murray
/s/ Janet T. Neff
/s/ Michael J. Talbot

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[6] However, plaintiff continues to maintain that defendants may have had a claim against their own attorneys for legal malpractice because they failed their duty to tender payment to a conservator and they recklessly or negligently directed defendants to pay the wrong party.